

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:)	Administrative Cause
)	Number: 15-003T
READOPTION OF 312 IAC 7:)	
TRAILS AND SCENIC RIVERS)	LSA Document #15-109(F)

RECOMMENDATION FOR FINAL ACTION ON READOPTION OF RULE

A. INTRODUCTION

For consideration is the readoption of 312 IAC 7 in its entirety, and without amendment. This article governs the use of snowmobile trails (312 IAC 7-1) and identifies the waterways that are included by the Natural Resources Commission in the Indiana natural, scenic and recreational river system (312 IAC 7-2). 312 IAC 7 can be accessed through the Indiana General Assembly's website at:

<http://www.in.gov/legislative/iac/T03120/A00070.PDF>.

Under 312 IAC 2-2-4(b), if rules are being readopted in their current form without amendments, the Director of the Division of Hearings may approve preliminary action. The Commission retained authority to take final action on readoptions.

The Director of the Division of Hearings approved preliminary action on February 10, 2015. The standard practice is to readopt rules by article, and 312 IAC 7 is now submitted for consideration as to final action.

B. READOPTION ANALYSIS REQUIRED UNDER IC 4-22-2.5-3.1 AND IC 4-22-2.1-5

Dale Brier, DNR Division of Outdoor Recreation, Streams and Trails Section Chief, was appointed Small Business Regulatory Coordinator for the rule readoption. He provided the following analyses of potential impacts to small business for the proposed readoption of 312 IAC 7:

REVIEW UNDER IC 4-22-2.1-5

The degree to which the factors analyzed in a previous economic impact statement have changed since the statement was prepared

Factors have not changed since the 2009 readoption of 312 IAC 7 under LSA Document #09-153(F).

Any regulatory alternatives included in the statement under IC 4-22-2.1-5(a)(5)

There were no regulatory alternatives in the Economic Impact Statement associated with LSA Document #09-153(F).

Any regulatory alternatives not considered by the agency at the time the statement was prepared could be implemented to replace one (1) or more of the rule's existing requirements

312 IAC 7-1 governs the use of snowmobile trails that have been designated by the Department of Natural Resources. 312 IAC 7-2 identifies the waterways that are included by the Natural Resources Commission in the Indiana natural, scenic, and recreational river system. There are no alternatives to be considered for implementation of these rules.

REVIEW UNDER IC 4-22-2.5-3.1

The continued need for the rule.

312 IAC 7-1 governs Snowmobile use on state trails and enhances IC 14-16-1. It is needed to specifically set up procedures for when the snowmobile trail is eligible to be open, define the snowmobile season, and to prohibit the use of wheeled vehicles. This allows the Department of Natural Resources to prosecute those that trespass when the trail is closed or that misuse the trail.

312 IAC 7-2 defines and describes the rivers included in the Natural, Scenic, and Recreational River System. IC 14-29-6 is the governing statute, but does not contain a list of the rivers and streams in the Natural, Scenic, and Recreational River System. The list of natural, scenic, and recreational rivers and streams is codified at 312 IAC 7-2-2, 312 IAC 7-2-3, and 312 IAC 7-2-4.

The nature of any complaints or comments received from the public, including small businesses, concerning the rule or the rule's implementation by the agency.

The Division of Outdoor Recreation has not received any complaints from the public, including small businesses, concerning these rules or the Department's implementation of these rules.

The complexity of the rule, including any difficulties encountered by:

(A) the agency in administering the rule; or

312 IAC 7-1 sets the snowmobile season, the process, and specifies that the Department will designate personnel to open and close any snowmobile trail according to specific criteria listed in 312 IAC 7-1-2. 312 IAC 7-1-3 prohibits wheeled vehicles from operating on the snowmobile

trails. Department of Natural Resources, Law Enforcement conservation officers routinely write citations to persons in violation of this rule.

IC 14-29-6-8 provides the process for selection of rivers for inclusion into the Natural, Scenic, and Recreational River System. The Department director may study and periodically submit to the Commission proposals for the inclusion of a section of a river into the system. 312 IAC 7-2 simply lists the sections or waterways included in the Natural, Scenic, and Recreational River System.

(B) small businesses in complying with the rule.

312 IAC 7 should have no effect on small business.

The extent to which the rule overlaps, duplicates, or conflicts with other federal, state, or local laws, rules, regulations, or ordinances.

312 IAC 7-1 works in cooperation with IC 14-16-1.

312 IAC 7-2 defines the rivers that are affected by IC 14-29-6. There are no known federal rule conflicts or overlaps.

The length of time since the rule was last reviewed under this section or otherwise evaluated by the agency, and the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule since that time.

These rules were readopted in 2009, and no changes are required. The DNR has received no applications for new rivers to be included in the scenic river program.

Executive Order 13-03 required agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the *Indiana Register* on or before January 14, 2013.” Financial Management Circular 2013-01 restated these requirements and added compliance information. On May 2, 2013, the Director of the Office of Management and Budget wrote to inform agency heads the moratorium set forth in Executive Order 13-03 was not applicable to readoptions.

As specified by Executive Order 2-89 and Financial Management Circular 2010-4, fiscal analyses of the rule readoption proposal were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent to Readopt a Rule, to the Office of Management and Budget and the Legislative Council on April 30, 2015. In an August 3, 2015 letter, the Director of the State Budget Agency recommended the proposed rule readoption be approved.

C. NOTICE OF INTENT TO READOPT AND RECOMMENDATION FOR FINAL ACTION

On April 29, 2015, the “Notice of Intent to Readopt” 312 IAC 7 was posted to the *Indiana Register* at 20150429-IR-312150109RNA as anticipated by IC 4-22-2.5-2 and IC 4-22-2.5-4. The notice indicated the intention to readopt the entirety of 312 IAC 7 without changes. The notice also provided that a person had 30 days to submit a written request to the Commission, through the Small Business Regulatory Coordinator, seeking to have a particular section of the rule readopted separately. If a request had been made, the Commission would have been required to complete the full rule adoption process for the section requested to be readopted separately. No request was made.

The Commission may submit the rule for filing with the Publisher under IC 4-22-2-35 or elect the procedure for readoption under IC 4-22-2. The hearing officer recommends the Commission approve for readoption 312 IAC 10, without amendment, for subsequent filing with the Publisher.

Dated: September 1, 2015

Dawn Wilson
Hearing Officer